

TTAB

ATTORNEY DOCKET NO. 3967-131

**OPPOSITION TO THE
REGISTRATION OF A MARK, WITH
DECLARATION****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 75/813,380

Filed October 1, 1999

For the Mark "LABCAST"

Published in the Official Gazette on 06/19/2001 at TM449

INNOVATIVE PROGRAMMING ASSOCIATES, INC.

(Name of Opposer)

v.

VANKEL TECHNOLOGY GROUP

(Name of Applicant)



09-07-2001

U.S. Patent & TMO/TM Mail Rcpt Dt #81

Opposition No.

NOTICE OF OPPOSITION

NAME AND ADDRESS OF OPPOSER:

INNOVATIVE PROGRAMMING ASSOCIATES, INC.
303 Wall Street
Princeton, New Jersey 08540

If a business then provide State or Country of Incorporation: A New Jersey Corporation.

The above identified Opposer believes that it will be damaged by registration of the mark shown in the above identified application, and hereby opposes the same.

A fee of \$300 has been enclosed for the following class of the above identified application: Class 38.

The grounds for opposition are as follows: (See Attached Statement)

By

Charles Manero
Charles F. Manero - Reg. No. 46,896
Attorney for Opposer
Woodbridge & Associates, P.C.
PO Box 592
Princeton, NJ 08542-0592
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Date

9/7/01

09/14/2001 G HOHAS2 00000106 75813380

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300.00 OP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application **Serial No. 75/813,380** published in the *Official Gazette* at **TM449** on
June 19, 2001 for the mark **LABCAST**.

-----X	:	
INNOVATIVE PROGRAMMING ASSOCIATES, INC.	:	Opposition No.
	:	
Opposer,	:	
vs.	:	
	:	
VANKEL TECHNOLOGY GROUP	:	
	:	
Applicant.	:	
	:	
-----X	:	

NOTICE OF OPPOSITION

INNOVATIVE PROGRAMMING ASSOCIATES, INC., a New Jersey corporation having its principal place of business at 303 Wall Street, Princeton, New Jersey 08540-1515, believes it will be damaged by registration of the mark shown in the above identified application, and hereby opposes registration.

As grounds for opposition, it is hereby alleged that:

1. Opposer, INNOVATIVE PROGRAMMING ASSOCIATES, INC., is a New Jersey corporation engaged in the business of developing, producing and marketing of software for the pharmacology/toxicology research community. Opposer develops a clinical pathology (analytical laboratory equipment) module which is used in conjunction with Opposer's Clinical

Pathology Analyzer Interface. Opposer also offers training and support services in relation to the use of the software and interfaced equipment (See Exhibit A). Opposer adopted and began using the mark LABCAT to identify the above goods since at least as early as June 14, 1983. The name LABCAT, however, has been in use by Opposer since December 20, 1982.

2. Opposer is the owner of the following United States Registration on the Principal Register

FEDERAL TRADEMARK REGISTRATION

MARK/TYPE	U.S. REG. NO.	REG./APP. DATE	GOODS/SERVICES
LABCAT	1,284,179	July 3, 1984	Computer programs recorded on magnetic discs. Class 9 (U.S. Class 38).

3. The above listed U. S. Registration is valid and in full force and effect and is attached hereto as Exhibit B.

4. Opposer has adopted and continues to use the above mark listed in paragraph two (2).

5. The mark listed in paragraph two (2) above is widely used and a substantial proportion of the public has come to recognize said marks as signifying Opposer's goods and services. As a result, Opposer has created and is the owner of substantial secondary meaning and goodwill in connection with the goods and services conducted under the mark listed in paragraph two (2) above.

6. Notwithstanding Opposer's prior rights to the mark listed in paragraph two (2) above, Applicant filed serial number 75/813,380 on October 1, 1999 for the mark "LABCAST" for:

"Video broadcasting services, namely, providing video broadcasting to selected customers in a video conference setting demonstrating use of analytical laboratory equipment," in International Class 38.

7. Applicant's application for "LABCAST" was published in the United States Official Gazette on June 19, 2001 at page TM449.

8. The mark "LABCAST", which Applicant seeks to register in Application Serial Number 75/813,380 is very similar in sound and appearance to Opposer's registration for the mark listed in paragraph two (2) above.

9. The services covered by Application Serial Number 75/813,380 include demonstrating use of analytical laboratory equipment.

10. Opposer is not connected in any way with the services offered by Applicant under its alleged mark, and use of Applicant's mark is without Opposer's consent or permission.

11. The goods provided by Opposer under its mark set out in paragraph two (2) above include computer software for, in part, tracking results of clinical pathology testing (See Exhibit C). The services covered under Applicant's mark include demonstrating use of analytical laboratory equipment. The type of analytical equipment demonstrated by Applicant's product is identical to the equipment used in conjunction with Opposer's software.

12. Furthermore, since the personnel who use Opposer's software will be the same personnel who will be served by Applicant, buyers and users of Applicant's services are likely to believe that such services come from the same source as the Opposer's goods or are in some way connected with or sponsored by Opposer or a common company.

13. Accordingly, Applicant's mark, when used in conjunction with the goods and services of Applicant set forth in Application Serial No. 75/813,380, so resembles the mark of Opposer as to cause confusion or cause mistake, or to deceive as to the source of origin or sponsorship of Applicant's services.

14. Furthermore, registration of Applicant's mark on the Principal Register of the United States Patent and Trademark Office would presumptively give to the Applicant prima facie

exclusive ownership and rights to the same and would therefore cause confusion and uncertainty in the trade and handicap and damage the legitimate present and future activities of the Opposer, INNOVATIVE PROGRAMMING ASSOCIATES, INC., by placing Applicant in a position to raise doubts as to the right of Opposer to use its mark listed in paragraph two above in connection with its goods and services. As a result, the Opposer's mark will eventually be diminished, diluted and deprived of all distinctiveness, since Applicant's use will blur Opposer's marks and identification.

15. Based on the foregoing, registration of the mark depicted in Application Serial Number 75/813,380 filed on October 1, 1999 on the Principal Register of the United States Patent and Trademark Office will cause injury and damage to Opposer.

16. WHEREFORE, Opposer requests that the registration sought by Applicant be refused.

Respectfully submitted,

INNOVATIVE PROGRAMMING ASSOCIATES, INC.

Dated: September 7, 2001

By: Charles Manero
Charles F. Manero, Esq.
Attorney for Opposer
Woodbridge & Associates
PO Box 592
Princeton, NJ 08542-0592
(609) 924-3773

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Assistant Commissioner for Trademarks, ATTN:TTAB - FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.

Date of Deposit : 9/7/01

Name : Charles F. Manero, Esq.

Signature

Charles Manero

Date of Signature : 9/7/01



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LABCAT Software Overview

LABCAT is a complete suite of PC-based software
for the pharmacology/toxicology research community...

Specializing in the pre-clinical phase of product development...

Pharmaceutical...

Chemical...

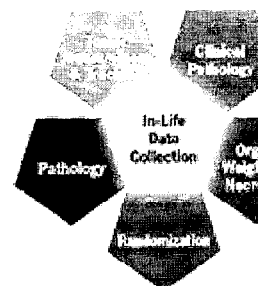
Agrochemical...

Helping to accelerate the discovery and development
of new drugs, chemicals
and pharmaceutical products...

Automating data collection, evaluation and reporting
in laboratories and research facilities
throughout the world...

LABCAT... setting the standard for innovative
computing solutions in pre-clinical research
for over two decades!

Click [here](#) for more about LABCAT software products....



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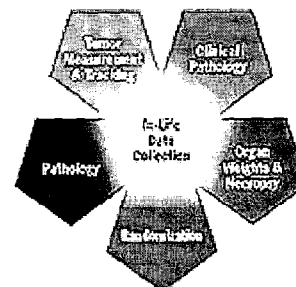
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LABCAT

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Product Overview

LABCAT is a suite of separate but integrated software modules designed for the collection, analysis and reporting of data during the pre-clinical phases of pharmaceutical, agrochemical, and biotech product development. Our software has been in use for over two decades, successfully automating laboratories worldwide. Currently available LABCAT software modules include:



Tumor Measurement and Tracking
In-Life Data Collection and Reporting
Organ Weights and Necropsy Records
Clinical Pathology
Pathology

Our flexible **Randomization Utility** is also available to enable assignment of pre-treatment animals to dose groups by random selection, body weight, or other user-specified clinical pathology parameter.

LABCAT software modules are PC-based Windows or DOS (under Windows)** applications that run on a network. They can also run stand-alone if desired.

All modules are built on relational database technology. When run in a networked environment, they provide secure access to server-resident databases from client machines.

LABCAT software products are designed for GLP (Good Laboratory Practices) compliance. All products offer certain features in common:

LABCAT software includes automated test scripts along with other validation and acceptance testing tools. On-site software installation and user training are also available.

IMPORTANT

See System Requirements for operating system and hardware components needed to run LABCAT software.

Network or stand-alone operation
 Password protection
 User-defined dictionaries
 Protocol options for varied data collection needs
 Easy-to-use menus and graphical interfaces
 Large selection of statistical analysis functions
 Extensive menus of exportable reports

Detailed user manuals
 On-line HELP

Comprehensive Support Services are available to LABCAT users:

Toll-free user support hotline in the USA and Canada
 Software upgrades and enhancements
 Regular User Group Meetings

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User Support Services

Ongoing support for LABCAT users is available through IPA's comprehensive Software Support Program (SSP). Subscription to the SSP includes:

TECHNICAL ASSISTANCE HOTLINE

Our staff is ready to assist with any questions or problems. Users can call our Support Hotline (toll-free in North America), or contact us via fax or e-mail.

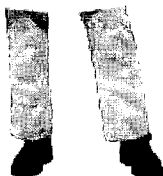


SOFTWARE MAINTENANCE UPDATES

We are continually revising the software to improve performance and incorporate functional modifications requested by our users. Such revisions, issued as Software Maintenance Updates, provide SSP subscribers with the most up-to-date, accurate software versions available.

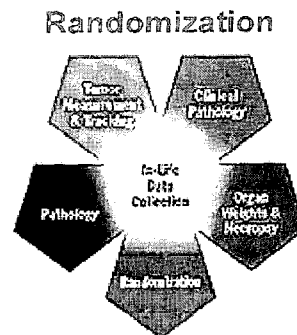
SOFTWARE ENHANCEMENT UPDATES

LABCAT users frequently give us worthwhile suggestions for new features, new reports or ways to make our software more user-friendly. We try to implement noteworthy ideas as soon as possible and distribute new releases as Software Enhancement Updates. In this way, users can benefit quickly from the improved functionality, system capacity, and compliance with changing GLP guidelines that the updates provide.



LABCAT USER GROUP MEETINGS (UGM)

LABCAT User Groups typically meet twice yearly, once in the U.S. and once in Europe. New information and items of general interest are discussed in formal sessions that also serve as an excellent forum for opinions and feedback from the user community. Informal gatherings and recreational events provide an opportunity for UGM attendees to talk to each other and learn from the experience of other users.

[Submit a Problem Report](#)[Suggest a Product Enhancement](#)

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Send us e-mail

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,284,179

Registered Jul. 3, 1984

TRADEMARK
Principal Register

LABCAT

Innovative Programming Associates, Inc. (New
Jersey corporation)
1 Airport Pl.
Princeton, N.J. 08540

For: COMPUTER PROGRAMS RECORDED
ON MAGNETIC DISCS, in CLASS 9 (U.S. Cl. 38).
First use Dec. 20, 1982; in commerce Jun. 14,
1983.

Ser. No. 433,988, filed Jul. 11, 1983.

J. TINGLEY, Examining Attorney

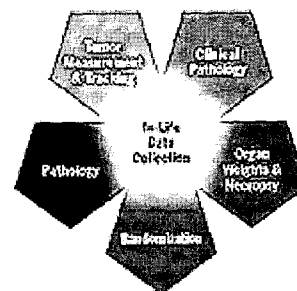

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Clinical Pathology

The *LABCAT* module for Clinical Pathology evaluates and reports data collected directly from clinical chemistry, hematology and urinalysis analyzers. In addition to features noted in the *LABCAT* Product Overview, the software provides for:



- Morphology and differential data**
- Assignment of accession numbers**
- User-defined data types and descriptions**
- User-defined dictionary of observations**
- Data entry from a large selection of analyzers,
as well as via keyboard/mouse**



For a representative list of compatible data acquisition devices, [click here](#).

This module accommodates single- or both-sex studies with up to:

- 40 dose groups per sex**
- 200 animals per dose group**
- 100 morphology codes**
- 200 user-defined tests**
- 100 differential cell types for red cells**
- 100 differential cell types for white cells**

For names of various data acquisition devices that are supported, please see [Clinical Pathology Analyzer Interface](#)

For hardware and operating system requirements for the Clinical Pathology module, refer to [System Requirements](#).

Predefined reports include Protocol, Test Directory, Differential Data, Regression Analysis, Individual and Summary Animal Data, Graph of Test Values, Morphology Observations, and Audit Trail Summary, among others. User reporting options include:

Data inclusion according to user-specified criteria such as group, sex, and animal

Statistical analysis functions including Descriptive Statistics, Dunnett, Duncan, Kruskal-Wallis, Mann-Whitney U, Newman-Keuls, Scheffe, t-Test, Tukey

User-defined report titles and footnote content

Export to common file formats (e.g., WORD, EXCEL)

NOTE: Specifications provided herein pertain to the Windows version of this module, currently under development, to be available shortly. The interim DOS-based version is more limiting in a number of areas. Please [contact us](#) for complete information.

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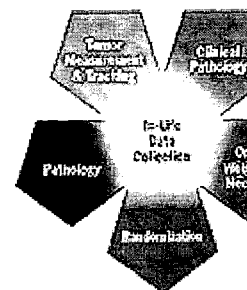

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Clinical Pathology Analyzer Interface



The Clinical Pathology Analyzer Interface also includes a Raw Data Report for data received from an analyzer or instrument's data transmission, and a Distributed Data Report for data actually distributed to a study.

LABCAT Clinical Pathology Analyzer Interfaces are used in conjunction with the Clinical Pathology module to allow data acquisition directly from a large selection of laboratory analyzers. A representative assortment of supported devices is listed below.



Clinical Chemistry

Abbott	JCA
Baker	Kodak
Beckman	Monarch
CIBA Corning	Shimadzu
Cobas Fara	Technicon
Hitachi	

Hematology

Abbott
Baker
Coulter
MLA
Sysmex
Technicon

Coagulation: MLA

Urinalysis: Clinitek

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ATTORNEY DOCKET NO.: 2509-105 Opp.

CERTIFICATE OF MAILING BY EXPRESS MAIL

"Express Mail" Mailing Label Number: **EL640214840US**

Express Mail Corporate Account Number: **X085783**

Date of Deposit: 9/7/01

Opposition to the mark "LABCAST" Serial No. 75/813,380



09-07-2001

U.S. Patent & TMO/tm Mail Rcpt Dt #61

ENCLOSED DOCUMENTS

- 1) Original Notice of Opposition (5 pages) and two copies thereof;
- 2) Coversheet and two copies thereof;
- 3) Exhibits A, B & C and two copies thereof;
- 4) Our check in the amount of \$300.00 for opposing one (1) class;
- 5) An acknowledgment postcard; and,
- 6) This Express Mail Certificate of Mailing.

I hereby certify that the enclosed documents are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to Assistant Commissioner for Trademarks, ATTN: TTAB 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Signed: Charles Manero

Charles F. Manero, Esq.
Reg. No. 46,896
Attorney for Applicant